IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

WA.No. 1359 of 2007()
{IN W.P.(C)NO.16150/2007 OF THIS COURT}
.....

APPELLANTS/PETITIONERS:

1. SIMON VAZ,
   DOOR NO.17/1714 A, VAIKATHARAN HOUSE,
   EXCHANGE ROAD, ALAPPUZHA.

2. HEMA ANTONY,
   W/O SIMON VAZ, DO. DO. DO.

   BY SENIOR ADV.SRI.V.N.ACHUTHA KURUP
   & ADV. SRI.B.S.SWATHY KUMAR

RESPONDENTS: RESPONDENTS

1. UNION OF INDIA, REPRESENTED BY THE
   SECRETARY, MINISTRY OF LAW, NEW DELHI.

2. VIJAYA BANK, WILLINGDON ISLAND BRANCH,
   NEAR AYYAPPA TEMPLE, NAVAL ROAD,
   KOCHI 682 003, REPRESENTED BY THE CHIEF MANAGER,
   VIJAYA BANK REGIONAL OFFICE, M.G.ROAD, ERNAKULAM.

R1 BY ADV.SRI. PARAMESWARAN NAIR - ASST. SOLICITOR GENERAL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 12/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.1359 of 2007

Dated this the 12th day of June, 2007.

JUDGMENT

H.L.DATTU, C.J.

This appeal arises out of an order passed by the learned single Judge in W.P.(C)No.16150/07 dated 29.5.2007. By the impugned order, the learned single Judge has rejected the writ petition.

2. The challenge of the appellants/petitioners before the learned single Judge was against Ext.P5 order passed by the Chief Judicial Magistrate, Alappuzha, appointing an advocate-commissioner for giving possession of the property belonging to the appellants/petitioners to the 2nd respondent bank, in whose favour the property is mortgaged.

3. In the writ petition, the petitioners have primarily sought for a declaration that the provisions of Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 {for short "**the Act**"} are void, inoperative and unconstitutional. They have further stated that Section 14 of the Act violates the principles of natural justice, as there was no notice as contemplated in the Act, before taking any action thereunder. Lastly, it is stated that the appellants are

prepared to pay the arrears of dues, as on today, which would be around Rs.3,03,992/-.

4. The grievance raised by learned counsel for the appellants before us is that the learned single Judge, without considering the grounds urged in the writ petition, has mechanically rejected the writ petition.

5. In **Mardia Chemicals Limited v. Union of India and others {2004(4) S.C.C. 311}**, the issue before the Supreme Court was the validity or otherwise of the Act. The Apex Court, after considering the entire provisions of the Act, has come to the conclusion that the Act is perfectly valid and is in no way unconstitutional.

6. In our view, in view of the declaration of law made by the Apex Court, none of the grounds urged by the appellants/petitioners in the writ petition need to have been taken note of by the learned single Judge.

7. It is an admitted fact that the property in dispute has been mortgaged with the 2nd respondent bank. In order to realise the amount due from the defaulter, the bank has pressed into service the provisions of the Act. Since possession was not handed over to the bank, the bank has gone before the Chief Judicial Magistrate, as contemplated under the Act itself. The

learned Chief Judicial Magistrate, after considering the plea raised by the appellants/petitioners, has come to the conclusion that no notice was required to be issued to the petitioners before passing any orders, on the request made by the 2nd respondent bank.

8. In our opinion, the reasoning and conclusion of the learned Chief Judicial Magistrate cannot be stated to be arbitrary or in violation of the statutory provisions and also contrary to the observations made by the Apex Court in **Mardia Chemicals Ltd. v. Union of India and others {**cited supra}.

9. In that view of the matter, we do not see any ground to interfere with the orders passed by the learned single Judge. Therefore, the writ appeal deserves to be rejected and it is rejected. Ordered accordingly.

Sd/-
H.L.DATTU
CHIEF JUSTICE

Sd/-
K.T.SANKARAN
JUDGE

sk/DK

//true copy//

P.S. To Judge